

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In Re: Matter of

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Federal Communications Commission
Office of Secretary

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations

MM Docket No. 05-144
RM-11189

(Dalhart and Perryton, TX)

To: The Secretary of the Commission
Attention: The Assistant Chief, Audio Division, Media Bureau

COMMENTS OF RADIO DALHART

Radio Dalhart, pursuant to Section 1.415 of the Commission's rules and the Commission's *Notice of Proposed Rule Making and Order to Show Cause* herein, DA 05-743, released March 23, 2005 ("*NPRM*"), hereby respectfully submits its comments in the captioned matter.

1. Radio Dalhart respectfully incorporates by reference its July 28, 2004 Petition for Rulemaking. Radio Dalhart restates its present intention to promptly apply for and construct facilities on the channel it has requested herein, if allotted. Radio Dalhart further restates its agreement to pay all of reasonable costs involved with the KEYE-FM frequency change that the *NPRM* requires in order to accommodate Radio Dalhart's proposal.

2. At paragraph 3 of the *NPRM*, the Assistant Chief, Audio Division, noted that a staff engineering analysis, using the methodology set forth in *Greenup, Kentucky and Athens Ohio*, 6 FCC Rcd 1493 (1991), had revealed a loss of service to 255 persons within 1,748 square kilometers, who would be reduced from two to one aural services, thereby creating "gray" area. The staff further found a gain of service to 14,160 persons, for a net gain of service to 13,905, and elimination of gray area to a population of 98, who would receive a second aural service. Comment was solicited as to the impact of these matters, and Radio Dalhart was invited to submit updated figures on the populations in the overall and gray gain and loss areas.

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3. Submitted herewith is a set of Engineering Comments from BEEM CO., Radio Dalhart's consulting engineers. Therein, using the *Greenup* procedures, substantially similar findings are presented to those of Commission staff in the *NPRM*. Specifically, BEEM posits a net gain of 14,142, a gray area loss of 133 and a gray area gain of 53.

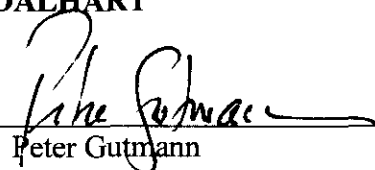
4. We respectfully submit that, regardless of which set of figures is used, the gray area loss is *de minimus* when compared to the overall population gain that will result from this proposal. The "worst case" scenario, presented by the staff figures, predicts net loss of service to a gray area population of 157, whereas the revised Radio Dalhart figures predict only 80. In *Seabrook, Huntsville, Bryan, et al., Texas*, 10 FCC Rcd 9360 (1995), a second service to 455 was deemed to fall only within the fourth, catch-all FM allotment priority (which includes overall service gains) rather than the second priority of gray area, as set forth in *Revision of FM Assignment Priorities and Procedures*, 90 FCC 2d 88 (1988). In *Wallace, Idaho and Bigfork, Montana*, 17 FCC Rcd 2243 (2002), *rev. den.* FCC 04-184 (August 5, 2004) at ¶ 5, creation of gray area of 150 population was deemed *de minimus*. The gray area here falls comfortably within these precedents.

5. In view of the foregoing, Radio Dalhart respectfully submits that the public interest would be served by implementation of the proposal set forth in the *NPRM*.

Respectfully submitted,

RADIO DALHART

By: _____


Peter Gutmann
Its Attorney

Womble Carlyle Sandridge & Rice, PLLC
1401 I Street, NW
Seventh Floor
Washington, DC 20005
(202) 857-4532

May 9, 2005

ENGINEERING COMMENTS
ON
NOTICE OF PROPOSED RULE MAKING
TO CHANGE CHANNELS OF
KEYE-FM, PERRYTON, TX FROM 241C3 TO 248C3
AND
KXIT-FM, DALHART, TX FROM 242C1 TO 241C1

MAY 2005

BY:
BEEM CO.
ARCADIA, CA
(626) 446-3468

ENGINEERING STATEMENT OF JOEL T. SAXBERG

This engineering report was prepared for Radio Dalhart, licensee of KXIT-FM, Dalhart, TX, by Broadcast Engineering and Equipment Maintenance Company, "BEEM CO." KXIT-FM operates on Channel 242 as a class C1 facility. Radio Dalhart proposes to change the frequency of KXIT-FM from Channel 242C1 to Channel 241C1 and to change frequency of KEYE-FM from 241C3 to 248C3. The FCC has invited the Petitioner to provide updated figures on the number of people in the gain and loss areas and the numbers of fulltime aural services available to these people, using the standards set forth in the Greenup decision.

This report was prepared in response to the invitation to provide updated gain and loss area numbers. The proposed changes in allocations would enable KXIT-FM to relocate its transmitter site towards the south, thus increasing the population within its 60 dBu contour by approximately 14,000 persons. The present population count within the KXIT-FM Class C1 60 dBu allocation contour is 35,487. At the allocation reference coordinates of 35-48-23N, 102-17-16W, the population count from a maximum class "C1" allocation will be 49,762. Three small gray areas will be created by this proposed move which encompass a population of 133. Two gain areas will be created where a present gray area will be eliminated as there will be two or greater aural services. The population gain in these two gain areas is 53. The net increase in population is 14,142. The gain of 14,142 persons represents an increase of 40%. Population figures in gain -loss gray areas were calculated by counting population numbers indicated for each centroid.

Maps showing interference free nighttime AM contours and FM 60 dBu contours are attached. Where there were numerous FM facilities, as in Amarillo, Texas, only a few typical contours were drawn so that the map might remain legible.

Our findings are in substantial agreement FCC staff engineering analysis.

Radio Dalhart has an interest in and intends to construct the proposed allocation facilities.

The proposed allocation changes fully meet the spacing requirements of §73.207.

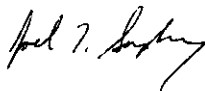
ENGINEERING CERTIFICATION

JOEL T. SAXBERG deposes and says:

1. That he is President of Broadcast Engineering and Equipment Maintenance Company, "BEEM CO.", radio engineering consultants. BEEM CO. maintains offices at: 2322 S. Second Avenue, Arcadia, CA 91006. Telephone (626) 446-3468
2. That he was graduated from California State University at Los Angeles, February 1966, with a Bachelor of Science degree in Electronic Engineering. He received a MS degree in Electronic Engineering Technology in August 1996.
3. That he has submitted many applications to the Federal Communications Commission for broadcast and auxiliary broadcast construction permits and licenses.
4. That his experience in broadcast engineering is a matter of record and he has spent over forty years working in the field of radio engineering.
5. That the attached report was prepared by him or under his direction and supervision. That he believes the facts stated therein to be both true and accurate. Statements that are based on information supplied by others are also believed to be true and accurate.
6. That he has performed field work on AM and FM broadcast transmitting systems throughout this country and continues to provide technical consulting services on a daily basis to broadcasters.
7. That he declares under penalty of perjury the foregoing is true and correct.

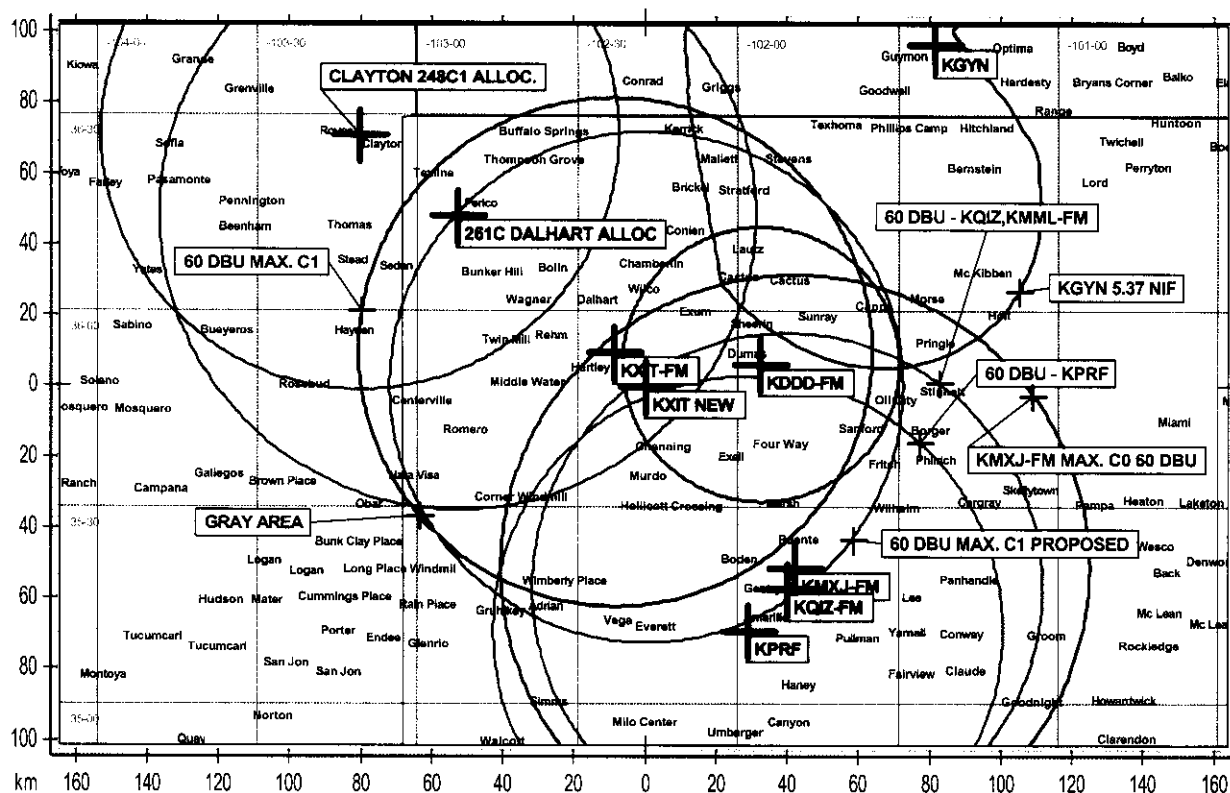
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on

May 6, 2005



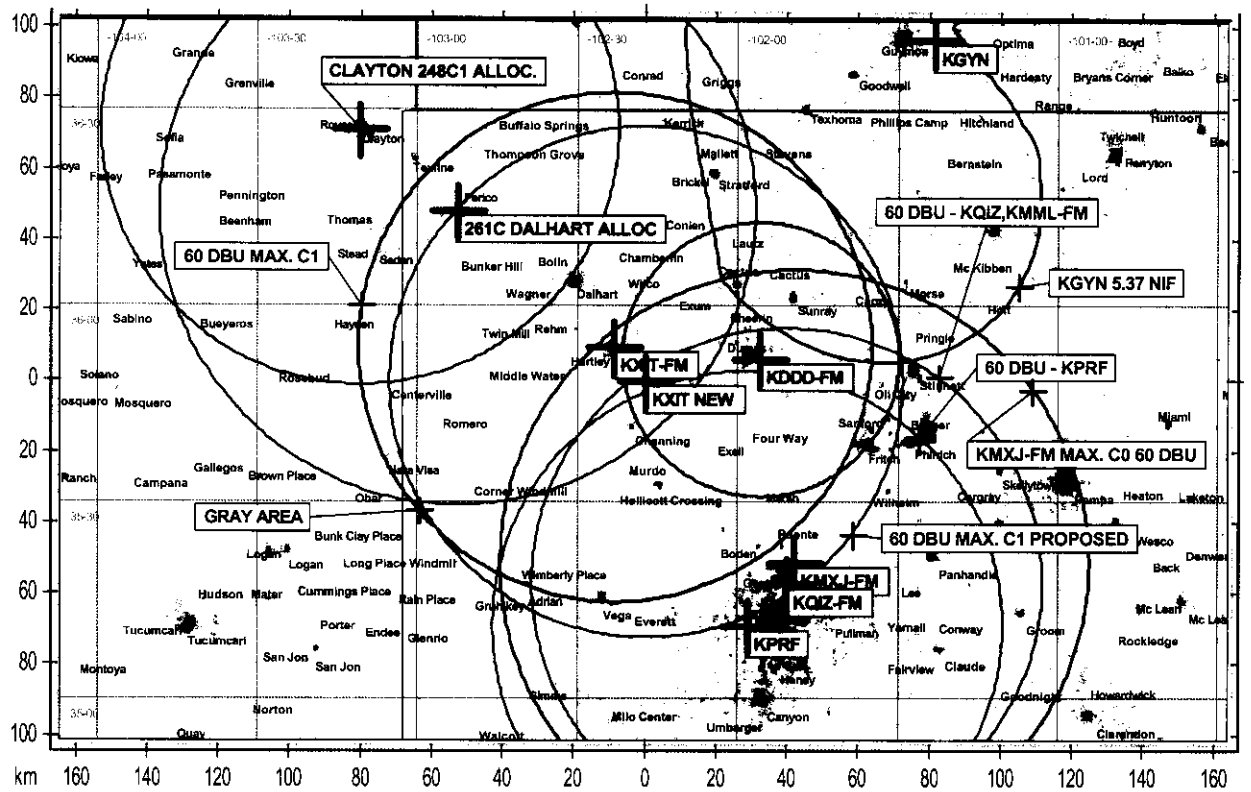
Joel T. Saxberg

MAP SCALE: 1:2,000,000

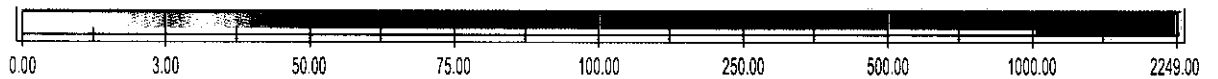


State Borders Lat/Lon Grid

MAP SCALE: 1:2,000,000



DALHART RADIO, INC.

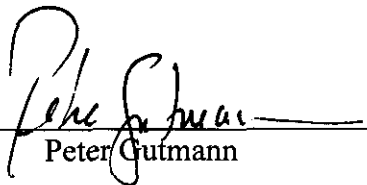


State Borders Lat/Lon Grid

CERTIFICATE OF SERVICE

I, Peter Gutmann, an attorney in the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that I have on this 9th day of May, 2005, caused copies of the foregoing Comments of Radio Dalhart to be mailed to the following by first-class United States mail, postage prepaid:

Perryton Radio, Inc.
7430 Colshire #4
McLean, VA 22102


Peter Gutmann